IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

MFA.No. 1072 of 2002(B)

OPMV.372/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD
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APPELLANT: PETITIONER
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1. **DR.H.VISWANATHA KAMATH, S/O.LATE H.RAGHAVENDRA KAMATH, 65 YEARS, "VISHWAKAMAL", PEROL, NILESHWARA - 671314 KASARGOD DISTRICT.**

BY ADV. SRI.K.SHRIHARI RAO

RESPONDENTS: RESPONDENTS
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1. **SRI.JOSEPH FERNANDAN, S/O. JOHN FERNANDAS, KUMARANGADI HOUSE, BELMAN, KARKALA, D.K.DISTRICT, KARNATAKA.**

2. **SRI.VIJAYA, S/O. SHIVANANDA SHETTY MANGALAPADE, JODUKATTE, KARKALA TALUK, D.K. DISTRICT, KARNATAKA.**

3. **THE NEW INDIA INSURANCE CO.LTD., MODERN BUILDING, UDUPI KARNATAKA.**

BY ADV. SRI.P.R.RAMACHANDRA MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007, ALONG WITH MFA NO.1074 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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M.F.A NO. 1072/2002

ORDER ON CMP. NO. 6548/2002, 1555.2003
IN MFA. NO.1072/2002

DISMISSED

07.09.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA , JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B. KOSHY & K.HEMA, JJ.

M.F.A.Nos. 1072 & 1074 of 2002

Dated this the 7th day of September, 2007

Judgment

Koshy,J.

A medical practitioner with M.B.B.S. degree, at the age of 60, met with a motor accident on 24.9.1997. He claimed compensation of Rs.15 lakhs. Tribunal awarded a total compensation of Rs.Six lakhs. Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. Claimant filed M.F.A.No.1072 of 2002 contending that compensation awarded was inadequate. Insurance company filed M.F.A.No.1074 of 2002 contending that compensation granted was excessive. Hence, both the appeals are heard together. Finding of negligence, coverage of insurance etc. are not disputed. Only dispute is regarding the quantum of compensation assessed.

2. It has come out in evidence that after the accident, appellant/claimant was taken to Colaco

Hospital, Bhatkal from where he was referred to Unity Health Complex, Mangalore in an ambulance van. He was treated there as an inpatient till 3.10.1997. Thereafter, he was referred to Ganga Hospital, Coimbatore for micro-vascular plastic surgery. He was admitted and treated in that hospital as an inpatient from from 4.10.1997 to 6.11.1997. Again, he was admitted in that hospital from 5.1.1998 to 14.1.1998 and bone grafting was done. The injuries sustained are: (i) severe (major) crush injury to left forearm and hand; (ii) comminuted fracture of lower and (1/3rd) of radius and ulna (left); (iii) fracture of wrist bones (left) and (iv) radial artery - cut at the wrist level. Ext.A18 certificate issued by PW4 doctor shows that claimant was having 18% permanent disability upper limb. Ext.C1 is the disability certificate issued by the medical board of the District Hospital, Kasaragod. It is certified as follows:

> "1. Ankylosis left wrist joint in 180 degree with permanent disability amounting to 32% (thirty per cent).
>
> 2. Absent rotations of left forearm which is ankylosed in

semisuninatal position with permanent disability amounting to 6% (six per cent).

3. Partially ankylosed fingers at metacarpo phalangeal joint of left hand with permanent disability amounting to 23% (twenty three per cent).

4. Partially ankylosed thumb at metacarpo phalangeal joint with permanent disability amount to 16% (sixteen per cent).

5. Shortening of left forearm by 5 c.m. with permanent disability amount to 8% (eight per cent)."

3. PW6, a member of the medical board, deposed that the claimant cannot do his job as a doctor because he lost his earning power as a doctor. According to the claimant, he is entitled to compensation for disability and loss of earning power at 100%. At the time of accident, he was employed in a private hospital and the salary certificate shows that he was getting Rs.7,000/- per month. It is his case that by private practice, he was getting another Rs.3,000/- per month. Tribunal calculated compensation not in a multiplier method, but, awarded Rs.3,00,000/- as compensation for disability and earning power. It is the contention of the insurance

company that it was on the higher side. 80% disability is only with regard to his left hand. We note that the medical certificate relates only to the disability of left upper limb. It is true that there was shortening of the left arm and there was crush injury from the wrist onwards. There was ankylosis in the wrist joint. We are of the view that considering the nature of the work, compensation can be awarded for 60% disability. In this connection, we also refer to the percentage of loss of earning power fixed under Schedule I, Part II, item No.4 of the Workmen's Compensation Act. He was aged 60 at the time of accident and 5 is the multiplier. Apart from monthly salary of Rs.7,000/-, being a doctor, he will be able to get some amount from private practice. So, we take Rs.8,250/- as the monthly income and compensation payable for 60% disability will be Rs.8250x 12 x 5 x $\frac{60}{100}$ = Rs.2,97,000/-. Amount awarded by the tribunal under this head was Rs.3,00,000/-. Therefore, it cannot be stated that award of the tribunal is too low, arbitrary or excessive warranting interference in an appeal proceedings. For pain and suffering, considering the nature of injuries, Rs.25,000/- was awarded. Other

amounts are mainly awarded for reimbursement of medical bills which were proved by producing actual medical bills as well as certificate. Considering all these factors, we are of the opinion that total compensation awarded by the tribunal is also reasonable and no interference is required.

Both appeals are liable to be dismissed and are dismissed.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NOS.1072 & 1074/2002

Judgment

Dated:7th September, 2007